S T A T E O F N E W Y O R K

2576

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, the economic development law, the public authorities law and the state finance law, in relation to recycling programs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 399-ff to read as follows:

S 399-FF. RECYCLED CONTENT OF PACKAGING. 1. FOR PURPOSES OF THIS SECTION:

(A) "CONSUMER COMMODITY" OR "COMMODITY" SHALL MEAN THE FOLLOWING, IF SOLD IN A PACKAGE:

(I) FOOD, WHETHER SOLID, LIQUID OR MIXED, AND ALL SUBSTANCES OR INGREDIENTS ADDED THERETO FOR ANY PURPOSE, USED OR INTENDED FOR CONSUMPTION BY HUMAN BEINGS OR DOMESTIC ANIMALS NORMALLY KEPT AS HOUSEHOLD PETS; AND

(II) GOODS, CUSTOMARILY SOLD AT RETAIL, THAT ARE USED BY CONSUMERS IN THE PERFORMANCE OF SERVICES ORDINARILY RENDERED WITHIN THE HOUSEHOLD, AND THAT ARE USUALLY CONSUMED OR EXPENDED IN THE COURSE OF SUCH USE.

(B) "LABEL" SHALL MEAN ANY WRITTEN, PRINTED OR GRAPHIC MATTER AFFIXED TO ANY PACKAGE CONTAINING A CONSUMER COMMODITY.

(C) "PACKAGE" SHALL MEAN A CONTAINER IN WHICH ANY CONSUMER COMMODITY IS ENCLOSED FOR SALE AT RETAIL, AND WHICH CONTAINS A SINGLE ITEM, A QUANTITY OF THE SAME ITEM, A SET OR AN ITEM WITH ALL ITS COMPONENT PARTS.

(D) "PRODUCT" SHALL MEAN THAT PORTION OF A CONSUMER COMMODITY OFFERED FOR SALE AT RETAIL THAT IS NOT A PACKAGE.

2. NO MERCHANT, MANUFACTURER, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL IMPORT, MANUFACTURE, SELL, HOLD FOR SALE OR DISTRIBUTION ANY CONSUMER COMMODITY WHICH FAILS TO DISCLOSE ON THE LABEL OF ITS PACKAGE THE RECYCLED CONTENT OF THE PACKAGE. THE LABEL SHALL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06953-01-1

CONTAIN A CIRCLE WITH AT LEAST THREE ARROWS ON THE CIRCUMFERENCE OF THE CIRCLE ALL FACING THE SAME DIRECTION, WITH THE PERCENTAGE OF THE RECYCLED CONTENT OF THE PACKAGE LOCATED WITHIN SUCH CIRCLE.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 2. The general business law is amended by adding a new section 399-fff to read as follows:

S 399-FFF. CONTRACTS FOR THE COLLECTION AND TRANSPORTATION OF COMMERCIAL WASTE. 1. DEFINITIONS.

A. "COMMERCIAL WASTE" SHALL MEAN WASTE GENERATED BY STORES, OFFICES, INSTITUTIONS, RESTAURANTS, WAREHOUSES, AND NONMANUFACTURING ACTIVITIES AT INDUSTRIAL FACILITIES.

B. "PERSON" SHALL MEAN ANY NATURAL PERSON, FIRM, ORGANIZATION, PARTNERSHIP, ASSOCIATION OR CORPORATION.

C. "SOLID WASTE" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION 27-0701 OF THE ENVIRONMENTAL CONSERVATION LAW.

2. EVERY WRITTEN CONTRACT FOR THE COLLECTION AND TRANSPORTATION OF COMMERCIAL WASTE FROM A PLACE AT WHICH SUCH WASTE IS GENERATED, SHALL SPECIFY THE RECYCLABLE, REUSABLE OR OTHER COMPONENTS OF SUCH WASTE THAT ARE REQUIRED TO BE SEPARATED IN ACCORDANCE WITH A LOCAL LAW OR ORDINANCE ADOPTED PURSUANT TO SECTION ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW AND ANY PENALTIES IMPOSED BY SUCH LAW OR ORDINANCE FOR THE FAILURE TO SEPARATE SUCH WASTE.

3. EVERY GENERATOR OF COMMERCIAL WASTE WHO CONTRACTS WITH ANOTHER PERSON FOR THE COLLECTION AND TRANSPORTATION OF SUCH WASTE, SHALL DISPLAY PROMINENTLY A NOTICE STATING THE RECYCLABLE, REUSABLE OR OTHER COMPONENTS OF SUCH WASTE THAT THE GENERATOR IS REQUIRED TO SEPARATE PURSUANT TO A LOCAL LAW OR ORDINANCE ADOPTED IN ACCORDANCE WITH SECTION ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW.

4. A KNOWING VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL FINE NOT TO EXCEED ONE THOUSAND DOLLARS.

S 3. The economic development law is amended by adding a new section 187-a to read as follows:

S 187-A. RECYCLING MARKET DEVELOPMENT PROGRAMS. NOTWITHSTANDING ANY PROVISION OF SECTIONS ONE HUNDRED EIGHTY-FOUR AND ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, AN ECONOMIC DEVELOPMENT POWER ALLOCATION MAY BE MADE TO A BUSINESS ENGAGED IN THE UTILIZATION OF SECONDARY MATERIALS AS RAW MATERIALS IN A MANUFACTURING PROCESS; PROVIDED THAT SUCH SECONDARY MATERIALS

ARE RECOVERED FROM SOLID WASTE PURSUANT TO SECTION ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW. APPLICATIONS FOR AN ALLOCATION OF ECONOMIC DEVELOPMENT POWER PURSUANT TO THIS SECTION SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE BOARD. SUCH CRITERIA SHALL ADDRESS, BUT NEED NOT BE LIMITED TO:

(A) THE APPLICANT'S LONG TERM COMMITMENT TO THE DEVELOPMENT OF MARKETS FOR SECONDARY MATERIALS IN NEW YORK STATE, AS EVIDENCED BY THE APPLICANT'S CURRENT AND PLANNED CAPITAL INVESTMENT IN FACILITIES IN THE STATE DESIGNED TO UTILIZE SECONDARY MATERIALS;

(B) THE EXTENT TO WHICH THE BUSINESS WILL SERVE AS A REGIONAL OR STATEWIDE MARKET OUTLET FOR SECONDARY MATERIALS;

(C) THE TYPES OF SECONDARY MATERIALS TO BE UTILIZED BY THE APPLICANT, AND THE EXTENT TO WHICH SUCH USE REPRESENTS A NEW MARKET OUTLET FOR SECONDARY MATERIALS;

(D) THE EXTENT TO WHICH THE APPLICANT'S UTILIZATION OF SECONDARY MATERIALS WILL SERVE TO DISPLACE THE CURRENT USE OF VIRGIN MATERIALS;

(E) THE EXTENT TO WHICH AN ALLOCATION OF ECONOMIC DEVELOPMENT POWER WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND THE BUSINESS'S UTILIZATION OF SECONDARY MATERIALS;

(F) THE GROWTH POTENTIAL OF THE BUSINESS FACILITY AND THE CONTRIBUTION OF ECONOMIC STRENGTH TO THE AREA IN WHICH THE BUSINESS FACILITY IS OR WOULD BE LOCATED;

(G) THE EXTENT TO WHICH AN ALLOCATION OF ECONOMIC DEVELOPMENT POWER IS CONSISTENT WITH STATE, REGIONAL AND LOCAL ECONOMIC DEVELOPMENT AND SOLID WASTE MANAGEMENT STRATEGIES, PLANS AND PRIORITIES AND SUPPORTED BY LOCAL UNITS OF GOVERNMENT IN THE AREA WHERE THE BUSINESS IS OR WOULD BE LOCATED; AND

(H) THE IMPACT OF THE ALLOCATION ON THE OPERATION OF ANY OTHER FACILITIES OF THE APPLICANT, ON OTHER BUSINESSES ENGAGED IN THE USE OF SECONDARY MATERIALS WITHIN THE STATE, AND UPON OTHER ELECTRIC RATEPAYERS.

FOR PURPOSES OF THIS SECTION AND SECTION ONE HUNDRED EIGHTY-SEVEN OF THIS ARTICLE, "SECONDARY MATERIALS" SHALL HAVE THE DEFINITION SET FORTH IN SUBDIVISION ONE OF SECTION TWO HUNDRED SIXTY-ONE OF THIS CHAPTER.

S 4. Subdivision (c) of section 187 of the economic development law, as amended by chapter 316 of the laws of 1997, is amended to read as follows:

(c) The board shall review the applications received and shall determine the applications which best meet the criteria established for the allocations authorized under this article and it shall recommend such applications to the power authority of the state of New York with such terms and conditions as it deems appropriate. Except for allocations subject to subdivision (g) of this section and section one hundred eighty-five OR SECTION ONE HUNDRED EIGHTY-SEVEN-A of this article, each allocation of economic development power recommended by the board shall be to serve new electrical demand at facilities at which new jobs are created. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the economic development power in the event the recipient fails to maintain mutually agreed upon levels of employment and power utilization OR SECONDARY MATERIALS USE.

S 5. Subdivision (c) of section 187 of the economic development law, as added by chapter 32 of the laws of 1987, is amended to read as follows:

(c) The board shall review the applications received and shall determine the applications which best meet the criteria and it shall recommend such applications to the power authority of the state of New York

with such terms and conditions as it deems appropriate. Except for allocations subject to subdivision (g) of this section and section one hundred eighty-five OR SECTION ONE HUNDRED EIGHTY-SEVEN-A of this article, each allocation recommended by the board shall be to serve new electrical demand at facilities at which new jobs are created. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the economic development power in the event the recipient fails to maintain mutually agreed levels of employment and power utilization OR SECONDARY MATERIALS USE.

S 6. Subdivision 13 of section 1005 of the public authorities law is amended by adding a new paragraph (c) to read as follows:

(C) RECYCLING MARKET DEVELOPMENT. NOTWITHSTANDING ANY PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, THE TRUSTEES SHALL ESTABLISH SPECIAL CRITERIA FOR THE EVALUATION OF APPLICATIONS FOR AN ALLOCATION OF EXPANSION POWER TO BUSINESSES ENGAGED IN THE UTILIZATION OF SECONDARY MATERIALS AS RAW MATERIALS IN A MANUFACTURING PROCESS; PROVIDED THAT SUCH SECONDARY MATERIALS ARE RECOVERED FROM SOLID WASTE PURSUANT TO SECTION ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW. SUCH CRITERIA SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(1) THE APPLICANT'S LONG TERM COMMITMENT TO THE DEVELOPMENT OF MARKETS FOR SECONDARY MATERIALS IN NEW YORK STATE, AS EVIDENCED BY THE APPLICANT'S CURRENT AND PLANNED CAPITAL INVESTMENT IN FACILITIES IN THE STATE DESIGNED TO UTILIZE SECONDARY MATERIALS;

(2) THE EXTENT TO WHICH THE BUSINESS WILL SERVE AS A REGIONAL OR STATEWIDE MARKET OUTLET FOR SECONDARY MATERIALS;

(3) THE TYPES OF SECONDARY MATERIALS TO BE UTILIZED BY THE APPLICANT, AND THE EXTENT TO WHICH SUCH USE REPRESENTS A NEW MARKET OUTLET FOR SECONDARY MATERIALS;

(4) THE EXTENT TO WHICH THE APPLICANT'S UTILIZATION OF SECONDARY MATERIALS WILL SERVE TO DISPLACE THE CURRENT USE OF VIRGIN MATERIALS;

(5) THE EXTENT TO WHICH AN ALLOCATION OF EXPANSION POWER WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND THE BUSINESS'S UTILIZATION OF SECONDARY MATERIALS;

(6) THE GROWTH POTENTIAL OF THE BUSINESS FACILITY AND THE CONTRIBUTION OF ECONOMIC STRENGTH TO THE AREA IN WHICH THE BUSINESS FACILITY IS OR WOULD BE LOCATED;

(7) THE EXTENT TO WHICH AN ALLOCATION OR EXPANSION POWER IS CONSISTENT WITH STATE, REGIONAL AND LOCAL ECONOMIC DEVELOPMENT AND SOLID WASTE MANAGEMENT STRATEGIES, PLANS AND PRIORITIES AND SUPPORTED BY LOCAL UNITS OF GOVERNMENT IN THE AREA WHERE THE BUSINESS IS OR WOULD BE LOCATED; AND

(8) THE IMPACT OF THE ALLOCATION ON THE OPERATION OF ANY OTHER FACILITIES OF THE APPLICANT, ON OTHER BUSINESSES ENGAGED IN THE USE OF SECONDARY MATERIALS WITHIN THE STATE, AND UPON OTHER ELECTRIC RATEPAYERS.

FOR PURPOSES OF THIS SUBDIVISION, "SECONDARY MATERIALS" SHALL HAVE THE DEFINITION SET FORTH IN SUBDIVISION ONE OF SECTION TWO HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

S 7. Subdivision 3 of section 165 of the state finance law is amended by adding a new paragraph k to read as follows:

K. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE REQUIREMENTS SET FORTH IN THIS SUBDIVISION PERTAINING TO THE RECYCLED CONTENT OF MATERIALS PROCURED BY THE STATE SHALL APPLY TO ALL FIRMS AND ORGANIZATIONS, PUBLIC AND PRIVATE, HAVING CONTRACTED WITH THE STATE ONE OR MORE TIMES IN A GIVEN YEAR FOR ANY PURPOSE. THE RESPECTIVE TIMETABLES AND EFFECTIVE DATES SET FORTH IN THIS SECTION PERTAINING TO THE RECYCLED CONTENT OF

MATERIALS PROCURED BY THE STATE SHALL APPLY TO THE AFOREMENTIONED VENDORS.

NOTHING IN THIS SECTION SHALL REQUIRE ANY ENTITY OTHER THAN THE STATE TO PROVIDE ANNUAL REPORTS OR ADHERE TO THE PRICE PREMIUMS STIPULATED FOR PROCURING SUPPLIES CONTAINING SECONDARY MATERIALS.

S 8. This act shall take effect October 1, 2011, provided that the amendments to subdivision (c) of section 187 of the economic development law made by section four of this act shall be subject to the expiration and reversion of such subdivision pursuant to chapter 316 of the laws of 1997, as amended, when upon such date the provisions of section five of this act shall take effect.